

**BOARD OF ADJUSTMENT MEETING  
CITY OF REHOBOTH BEACH**

**April 25, 2011**

The Board of Adjustment Meeting of the City of Rehoboth Beach, was called to order at 7:01 p.m. by Acting Chairman Clifton Hilderley on Monday, April 25, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Present: Mr. Doug Popham  
Ms. Myrna Kelley  
Mr. Clifton Hilderley  
Mr. Frank Cooper

Absent: Mr. Tom Evans

Also Present: Mr. Craig Karsnitz, Esq., Board of Adjustment Solicitor

A quorum was present.

**CORRESPONDENCE**

There was none.

**APPROVAL OF MINUTES**

Minutes of the March 28, 2011 Board of Adjustment meeting were distributed prior to the meeting.

Ms. Myrna Kelley made a motion, seconded by Mr. Frank Cooper, to approve the minutes of the March 28, 2011 meeting as written. Motion carried unanimously.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

**Case No. 0211-02.** A REQUEST FOR THREE VARIANCES in regard to Sections 270-50(B), 270-26(A) and 270-4 – Half Story of the Municipal Code of Rehoboth Beach to allow the renovation and addition to an existing non-conforming structure devoted to a conforming use. The property is located on Block 19, Lot No. 56 at 211 Hickman Street. The Variances are being requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC on behalf of Jerome C. Capone and Carolyn M. McNiece, owners of the property.

Mr. Chase T. Brockstedt, Esq., representative of Mr. Jerome Capone and Ms. Carolyn McNiece, provided testimony to seek relief from three (3) sections of the Municipal Code, Section 270-50(B) which prohibits the extension of a non-conforming structure, Section 270-26(A) which speaks to side yard setbacks and Section 270-4 which includes the definition of a half-story.

Applicants' Exhibit A – Cover letter dated February 23, 2011 and packet submitted February 23, 2011 which includes:

- Tab 1 – Application for Variance.
- Tab 2 – Supplement to Application.
- Tab 3 – Property Location Survey of 211 Hickman Street.
- Tab 4 – Property, Location and Tree Survey which includes adjacent lands.
- Tab 5 – Photographs.
- Tab 6 – Existing Floor Plans and Elevations.
- Tab 7 – Proposed Floor Plans and Elevations.
- Tab 8 – Proposed Addition Identified on Survey.
- Tab 9 – October 28, 2010 correspondence from Douglas M. Wingate.
- Tab 10 – February 4, 2011 correspondence from Paul M. Imher, D.O.

Applicants' Exhibit B – Letter dated March 7, 2011 and submitted March 8, 2011 which corrected a typographical error.

Applicants' Exhibit C – Letter dated March 17, 2011 and submitted March 18, 2011 which included four (4) letters in support of the Variance requests.

Applicants' Exhibit D – Letter dated March 30, 2011 and submitted March 31, 2011 which included two (2) letters in support of the Variance requests.

Applicants' Exhibit E – Letter dated April 25, 2011 and submitted April 25, 2011 in support of the Variance requests.

Mr. Anthony Veto, architect/builder and Mr. Jerome C. Capone provided additional testimony to allow the three Variances.

Building Inspector Terri Sullivan gave her report with exhibits. (Copy attached.)

Correspondence:

1. Letter dated March 14, 2011 and received March 15, 2011 from Mr. Charles W. and Mrs. Rosemarie Bahan, 215 Laurel Street – in support of.
2. Letter dated March 8, 2011 and received March 18, 2011 from Mr. David Knobelspiesse, 209 Hickman Street – in support of.
3. Letter dated March 12, 2011 and received March 18, 2011 from Ms. Linda Kauffman and Ms. Dee Speck, 206 Laurel Street – in support of.
4. Letter dated March 13, 2011 and received March 18, 2011 from Mr. Gary A. Myers, 217 New Castle Street – in support of.
5. Letter dated March 13, 2011 and received March 18, 2011 from Mr. Richard H. and Mrs. Melody M. Knotts – 225 Hickman Street – in support of.
6. Letter dated March 21, 2011 and received March 31, 2011 from Mr. Dave and Mrs. Nancy Deluca, 208 Laurel Street – in support of.
7. Letter dated March 26, 2011 and received March 31, 2011 from Ms. Lois Ann Rayner, 212 Laurel Street – in support of.
8. Letter dated April 20, 2011 and received April 25, 2011 from Mr. Floyd Layton, 215 Hickman Street – in support of.
9. Letter dated April 25, 2011 and received April 25, 2011 from Martha L. Marino, 220 Hickman Street – in support of.

Public Comment:

1. Mr. Edward Szabo, 220 Hickman Street – in support of.
2. Mr. Bob Dieterle, 209 Hickman Street – in support of.

Ms. Kelley made a motion, seconded by Mr. Popham, to grant the three Variances as requested.

Mr. Cooper said that he could support the request for Variances in regard to Sections 260-50(B) and 270-26(A), but he could not support the knee-wall third floor. It seemed to be purely an extension effect that any hardship there is truly self-created. Mr. Cooper would be willing to support the raising of the walls and the extension as designed to the front.

Acting Chairman Hilderley said that difficulties which are uniquely personal to the owner rather than intrinsically related to the property itself are not appropriate subjects for relief under the variance procedure. The fact that the Appellants want to use it full-time and want to use it for an office has nothing to do with the Board of Adjustment's consideration. The Board of Adjustment must consider the facts that are pertinent and the Code that is relevant. The Board is restricted to what it must consider. In the matter of hardship, this is a use variance when there is an undersized property and the Appellant wants to build something on it that the Code does not allow.

Attorney Brockstedt said that with regard to the knee-wall being identified as purely an extension of the living premises and that it was self-created, there was a Superior Court case in Delaware which was ultimately appealed to the Supreme Court and the decision of the court below was affirmed. He read from case law that assuming that the applicants in that case created the difficulties that generated the need for the variances, that alone would not suffice to deny the variances. In Delaware, the law is clear. There is no per se bar against a variance for a self-imposed hardship. With regard to this being an area variance vs. a use variance, the quick-check case tells that this is an area variance. The use is residential in nature today, and the proposed use will continue to be residential. This is not the creation of a new structure where none exists. This is literally the extension of a structure. In regard to the Appellants themselves, one of the factors under the quick-check case is to weigh the hardship on the

Appellants should the Variance not be granted. It is under that part of Delaware law where the Board of Adjustment is tasked to specifically take into account the effect this Variance would or would not have on the Appellant. While it is tied to the intrinsic nature of the land, it is incorrect under Delaware law to say that there should be no consideration given to the circumstances facing the Appellant because the quick-check case tells the opposite.

(Popham – for. Basically there has been a hardship created. As far as the use on the land, it appears that there is no opposition from the neighborhood, and it sounds like there is a history of 25 foot wide lots within the City that should be taken into consideration in granting these Variances. Kelley – for. Given the very difficult situation, they are to be commended for putting together a daring plan that fits in with the neighborhood beautifully. Hilderley – against. This is too extreme. It is way beyond the authority of the Board of Adjustment to grant the three Variances requested based on the facts presented. It is very much out of character and the intent of the City Commissioners and the policy established in recent years to build up, build larger and build more on a lot that is only 25 feet wide. He was distressed by the fact that there are no yards on the side which is a very extreme thing in view of what has gone on in the City. He cannot see that the Board of Adjustment would be applying the City Code by approving the three Variances as requested. Cooper – against this request as presented. As presented, this is abridged too far as far as the number, amount and the severity of the Variances.) Motion failed.

Attorney Brockstedt suggested that in regard to the Variance related to the third story knee-walls, the Appellants are willing to withdraw that part of the plan and withdraw the request for Variance from that Section of the Code for the half-story. The intent is to recapture that square footage elsewhere in the addition because there are no implications with regard to the Floor Area Ratio (FAR) or the lot area coverage. The desire was to make it least intrusive to 209 and 213 Hickman Street and to keep as much of the open space in front of 211 Hickman Street intact as possible. The Appellants are willing to forego the loft plan which would forego the relief from Section 270-4 for the knee-walls. They would reserve the right to add the square footage to the footprint of the proposed first floor plan which would be in the area of the study.

Mr. Cooper made a motion, seconded by Mr. Popham, to grant the two Variances in regard to Sections 270-50(B) and 270-26(A) minus the Variance from Section 270-4 – Half Story. (Popham – aye. As stated before, the plan was prepared and a hardship was created. He could accept the first two Variances. Kelley – aye. They certainly have met a standard practical difficulty. Hilderley – opposed, for the same reasons he expressed in the opening detail regarding the first motion that was made. Cooper – aye, because of many of the reasons given. It is much because of the neighbors than anything. His goal and reason for being on the Board is to protect other neighboring people. It is a good plan, and he is in favor of the Variances in regard to Sections 270-50(B) and 270-26(A).) Motion carried.

#### **OTHER BUSINESS**

There was none.

There being no further business, Acting Chairman Hilderley declared the meeting adjourned at 8:16 p.m.

**Respectfully submitted,**

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**(Ann M. Womack, Recording Secretary)**

**MINUTES APPROVED ON  
MAY 12, 2011**

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**(Thomas A. Evans, Chair)**